



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 20, 1996

Mr. B. Michael Rice  
Executive Director  
State Board of Barber Examiners  
333 Guadalupe, Suite 2-110  
Austin, Texas 78701

OR96-2153

Dear Mr. Rice:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID#36983.

The State Board of Barber Examiners (the "board") received a request for information concerning the identities of complainants who developed medical conditions which may have resulted from unsanitary conditions in Dallas/ Ft. Worth - area barber shops. You have asked this office whether the board would violate the privacy rights of an individual or the confidentiality protection of the informer's privilege by releasing a list of the complainants' names.

Section 552.101 excepts from disclosure information that is confidential by law, either constitutional, statutory, or by judicial decision. The informer's privilege, incorporated into the Open Records Act by section 552.101, is actually a governmental entity's privilege to withhold from disclosure the identity of those persons who report violations of law. The privilege recognizes the duty of citizens to report violations of law and, by preserving their anonymity, encourages them to perform that duty. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege protects the identity of a person who reports a violation or possible violation of law to officials charged with the duty of enforcing the particular law. This office has held that the informer's privilege also applies when the informer reports violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 515 (1988) at 2 (quoting Open Records Decision No. 279 (1981) at 2). The Attorney General has previously held that the privilege protects the identities of persons who made complaints regarding licensing violations of a particular nursing home to the Texas Department of Human Resources, Open

Records Decision No. 376 (1983), and who informed the Texas Board of Private Investigators and Security Agencies about an unlicensed person acting as a private investigator. Open Records Decision No. 183 (1978). The privilege may protect the informer's identity and any portion of his statement that may tend to reveal his identity. Open Records Decision No. 515 (1988) at 2. Once the identity of the informer is disclosed to those who have a cause to resent the communication, however, the privilege is no longer applicable. See Open Records Decision Nos. 515 (1988), 191 (1978).

The board's authority to regulate the practice of barbering is set forth under TEX. REV. CIV. STAT. ANN. Art. 8407a, sec. 28(a). That statute states in pertinent part:

The State Board of Barber Examiners, by and through the Texas Department of Health, shall have the authority, and it is made its duty to enter upon the premises of all barber shops, specialty shops, barber schools, or any place (it) has probable cause to believe that any of its certificate holders or licensees are practicing illegally and *inspect* same at any time during business hours. On receipt of a formal written complaint by any person that a person who holds a barber or teacher certificate or license or a barber school, barber college or barber shop permit issued by the State Board of Barber Examiners has violated this Act, that board may *inspect* the premises of the licensee or certificate holder to investigate the complaint at any time during business hours....Subject only to the authority of the Texas Board of Health to make and promulgate reasonable rules and regulations as to sanitation, the State Board of Barber Examiners shall have full authority and power to...establish standards of conduct and ethics for all persons licensed or practicing under the provisions of this Act, and to regulate the practice and teaching of barbering in all of its particulars in keeping with the purposes of this Act or to insure strict compliance with or enforcement of this Act. (Emphasis added).

Regulations adopted by the Texas Department of Health establishing sanitation standards for Texas barber shops are found at 25 TEX. ADMIN. CODE 265.91 - 102 (West 1995). Because the complainant reported a violation of law, a sanitation standard, to the board, an agency authorized to conduct inspections to ensure compliance with those standards, information identifying the complainant is protected from disclosure under the informer's privilege, unless the complainant's identity is known to the alleged violator of the regulations. We conclude that, under the informer's privilege of section 552.101 of the Government Code, the board may withhold from disclosure the identity of complainants reporting unsanitary conditions existing in shops under the regulatory authority of the board.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

---

<sup>1</sup> As we are resolving your request under the "informer privilege" doctrine of 552.101, we need not address the question of whether release of complainant's names would violate the statutory or common law privacy rights of the complainants.

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID#36983

Enclosures: submitted documents

cc: Mr. Drew Barry  
Assistant News Director  
WFAA-TV  
Communications Center  
606 Young Street  
Dallas, Texas 75202-4810  
(w/o enclosures)